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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,588	02/27/2002	James Morrison	7540.10	2785
26884	7590	06/17/2009	EXAMINER	
PAUL W. MARTIN NCR CORPORATION, LAW DEPT. 1700 S. PATTERSON BLVD. DAYTON, OH 45479-0001			NGUYEN, NGA B	
ART UNIT	PAPER NUMBER			
		3692		
MAIL DATE	DELIVERY MODE			
06/17/2009	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/084,588	<b>Applicant(s)</b> MORRISON ET AL.
	<b>Examiner</b> Nga B. Nguyen	<b>Art Unit</b> 3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 28 April 2009.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-56 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-56 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**REISSUE APPLICATION\_DETAILED ACTION**

1. This Office Action is the answer to the Amendment filed on April 28, 2009, which paper has been placed of record in the file.
2. Claims 1-56 are pending in this application.

***Response to Arguments/Amendment***

3. Applicant's arguments with respect to claims 1-56 have been fully considered but are not persuasive.

In response to the applicant's arguments regarding to claims 22-56, examiner submits that the applicant is no longer allowed to broaden any limitation that was added by amendment or argued to make the patent claims patentable. By arguing that the "determining a second identification code" limitation in the patent prosecution, the applicant has surrendered any claim that lacks that limitation in it's entirely. Thus, the error the applicant is correcting is to remove this very limitation. Therefore, all new claims 22-56 are lacking the limitation and thus are guilty of recapture.

In conclusion, for the reason set forth above, examiner decides to maintain the rejection and make this Office action FINAL.

4. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Rejection 35 U.S.C. 251, Defective Reissue Oath/Declaration***

5. The reissue oath/declaration filed with this application is defective (see 37 CFR § 1.63 and 1.175 and MPEP § 1414) because of the following:

The declaration does not state that "*all errors being corrected in the reissue application up to the time of the filing of the declaration arose without any deceptive intention on the part of the applicant*" (37 CFR 1.75 (a) (2)) or language equivalent thereto.

Claim 1-56 are rejected as being based upon a defective reissue under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defects in the Oath/Declaration is set forth in the discussion above in this Office action

***Rejection, 35 U.S.C. 251, Recapture***

6. Claims 22-56 are rejected under 35 U.S.C. 251 as being an improper *recapture* of broadened claimed subject matter surrendered in the application for the patent upon

which the present reissue is based. See *Pannu v. Storz Instruments Inc.*, 258 F.3d 1366, 59 USPQ2d 1597 (Fed. Cir. 2001); *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to claim subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope of claim subject matter surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

The applicant is no longer allowed to broaden any limitation that was added by amendment or argued to make the patent claims patentable. By arguing that the "determining a second identification code" limitation in the patent prosecution, the applicant has surrendered any claim that lacks that limitation in it's entirely. Thus, the error the applicant is correcting is to remove this very limitation. Therefore, all new claims 22-56 are lacking the limitation and thus are guilty of recapture.

### ***Conclusion***

7. Claims **1-56** are rejected.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (571) 272-6796. The examiner can normally be reached on Monday-Thursday from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3600.

9. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

Or faxed to:

(703) 273-8300 (for formal communication intended for entry),  
or  
(571) 273-6796 (for informal or draft communication, please label  
"PROPOSED" or "DRAFT").

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nga B. Nguyen/  
Primary Examiner, Art Unit 3692

June 9, 2009